Comar, Inc. *and* American Flint Glass Workers Union of North America, AFL–CIO. Case 4–CA–28570

July 31, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On August 2, 2001, Administrative Law Judge William G. Kocol issued the attached decision. The Respondent filed exceptions, a supporting brief, and a motion to reopen the record.[1] The General Counsel and the Charging Party filed cross-exceptions, supporting briefs, and answering briefs to the Respondent's exceptions. The General Counsel and Charging Party filed oppositions to the Respondent's motion to reopen the record.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[2] and to adopt the recommended Order as modified.[3]

We agree with the judge that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain with the Union concerning the effects on employees of the Respondent's relocation of its applicator division from Vineland, New Jersey, to Buena, New Jersey. We further agree that a *Transmarine*[4] limited backpay remedy is warranted to remedy the Respondent's effects bargaining violation. We find merit in the General Counsel's cross-exceptions to the judge's failure to extend the *Transmarine* limited backpay remedy to all unit employees, including those who transferred to the Respondent's Buena facility. Accordingly, we hereby modify the judge's remedy to conform to the Order herein.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Comar, Inc., Buena, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(j):

"(j) Pay to the unit employees their normal wages when in the Respondent's employ from 5 days after the date of this decision until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the relocation of the unit employees from Vineland to Buena, New Jersey; (2) the date a bona fide impasse in bargaining occurs; (3) the failure of the Union to request bargaining within 5 business days after receipt of this decision, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any employee exceed the amount that he or she would have earned as wages from the date of the relocation of the unit employees to the time he or she secured equivalent employment; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ at Vineland, with interest."

2. Substitute the following for paragraph 2(k):

"(k) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order."

3. Substitute the attached notice for that of the administrative law judge.

[1] We deny the Respondent's motion to reopen the record but note that the Respondent can offer, in compliance proceedings, evidence of changes in its operations that occurred after the hearing, to the extent that such changes might affect the remedy.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that the Respondent failed to recognize the Union as the bargaining representative of the relocated Vineland employees, Chairman Battista finds it unnecessary to rely on the fact that at least 40 percent of the Vineland unit relocated to Buena. *Westwood Import Co.*, 251 NLRB 1213 (1980); *Harte & Co.*, 278 NLRB 947 (1986). The Chairman notes that *all* of the employees performing the relocated work at Buena transferred from the Vineland unit.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) by failing to recognize and bargain with the Union, we agree that the Vineland bargaining unit maintained its integrity after its relocation to the Buena facility (see, e.g., *Radio Station KOMO-AM*, 324 NLRB 256, 262–263 (1997)), although we find that this case does not present an accretion issue.

[3] We have modified the Order in accordance with *Ferguson Electric Co.*, 335 NLRB 142 (2001). We will substitute a new notice in accordance with our recent decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).

[4] *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to recognize the American Flint Glass Workers Union of North America, AFL–CIO as the collective-bargaining representative of the employees in the unit.

WE WILL NOT change the terms and conditions of employment covered in the collective-bargaining agreement of unit employees without first obtaining the Union's consent.

WE WILL NOT unilaterally change other terms and conditions of employment of unit employees without first giving the Union notice and an opportunity to bargain over those changes.

WE WILL NOT condition continued employment on the acceptance of unlawfully implemented changes in terms and conditions of employment, thereby discharging employees.

WE WILL NOT fail or refuse to provide the Union with requested information that is relevant and necessary for the Union to fulfill its role as the collective-bargaining representative of the unit employees.

WE WILL NOT fail or refuse to bargain in good faith with the Union concerning the effects on unit employees of the relocation of unit work to the Buena facility.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All hourly paid production workers who are performing the work that was formerly done as part of the Applicator Division of Comar, Inc., at its facility then located in Vineland, New Jersey, except plant executives, salesmen, office employees, janitors, watchmen and foremen, as excluded by the provisions of the Labor Management Relations Act of 1947 as amended.

WE WILL, on request, rescind the unlawful changes made in the terms and conditions of employment of the unit employees.

WE WILL make the unit employees whole for any loss of earnings or benefits they suffered as a result of the unlawful changes made in the terms and conditions of their employment, with interest.

WE WILL, within 14 days from the date of the Board's Order, offer those unit employees who did not transfer to Buena, New Jersey, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make those employees whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of those employees, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL, on request, furnish the Union with information relevant and necessary to the Union's function as your exclusive collective-bargaining representative.

WE WILL, on request, meet and bargain collectively in good faith with the Union concerning the effects on unit employees of our decision to relocate unit work to the Buena facility and, if any understanding is reached, WE WILL embody it in a signed agreement.

WE WILL pay to the unit employees their normal wages when in our employ from 5 days after the date of this decision until the occurrence of the earliest of the following conditions: (1) the date we bargain to agreement with the Union on those subjects pertaining to the effects of the relocation of the unit employees from Vineland to Buena, New Jersey; (2) the date a bona fide impasse in bargaining occurs; (3) the failure of the Union to request bargaining within 5 business days after receipt of this decision, or to commence negotiations within 5 business days after receipt of the notice of our desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any employee exceed the amount that he or she would have earned as wages from the date of the relocation of the unit employees to the time he or she secured equivalent employment; provided, however, that in no

event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in our employ at Vineland, with interest.

Henry R. Protas, Esq., for the General Counsel.
Howard K. Trubman, Esq. (Dilworth Paxson, LLP), of Philadelphia, Pennsylvania, for the Respondent.
James R. LaVaute, Esq. (Blitman & King), of Syracuse, New York, for the Union.

DECISION

STATEMENT OF THE CASE

WILLIAM G. KOCOL, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on May 21–22, 2001. The charge and amended charges were filed September 10, October 4 and 19, 1999,[1] January 3, 2000, and February 6, 2001. The complaint was issued February 7, 2001. It alleges that Comar, Inc. (Respondent) violated Section 8(a)(5) and (1) of the Act by refusing to provide the American Flint Glass Workers Union of North America, AFL–CIO (the Union) with certain information, by consolidating operations from two facilities without bargaining about the effects of the consolidation on unit employees, by failing and refusing to bargain with the Union for a successor collective-bargaining agreement, by failing and refusing to recognize the Union as the collective-bargaining representative of the unit employees, by unilaterally establishing new wages and other terms of employment, and by constructively discharging 20 employees who refused to accept the new terms of employment. Respondent filed a timely answer that admitted the allegations of the complaint concerning the filing and services of the charge, jurisdiction, labor organization status, and collective-bargaining history. Respondent denied the remaining allegations in the complaint.

On the entire record,[2] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent, and the Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, has facilities in Vineland and Buena, New Jersey,[3] where it has been engaged in the manufacture of packaging products and medical device components for pharmaceutical, health care, and personal care customers and where it annually sold and shipped goods valued in excess of $50,000 directly to points outside the State of New Jersey. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[1] All dates are in 1999 unless otherwise indicated.

[2] The Union's unopposed motion to correct transcript is granted. P. 210, L. 8 of the transcript is corrected to read: "I want to ask you *at* that . . . ."

[3] Respondent also has an operation in Puerto Rico. That facility is not involved in this proceeding.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

As indicated, Respondent has facilities in Buena and Vineland,[4] New Jersey. The facilities are about 10 miles apart. Before the consolidation that occurred on September 27, which is more fully described below, Gene Concordia was Respondent's executive director of operations. Concordia oversaw the operations of both facilities. During the times relevant to this proceeding, Ellen Duffy was director of human resources. Concordia and Duffy had their offices at the Buena location.

The Vineland facility had its own plant manager, Larry Neher. Reporting to Neher was Ron Schultz, supervisor for the first shift, and Keith Anderson, supervisor for the second shift. Rose Gabriel, quality control supervisor, also reported to Neher. The Union has represented employees at the Vineland facility since 1955. Respondent purchased the facility in 1983 and recognized the Union. The most recent contract, which is between Respondent's applicator division and the Union, ran from October 1, 1996, through September 30, 1999. That contract described the unit as:

> [A]ll hourly paid production workers, except plant executives, salesmen, office employees, janitors, watchmen and foremen, who are working in the plant on Castpa Place and Edrudo Road, Vineland, New Jersey, as excluded by the provisions of the Labor Management Relations Act of 1947 as amended.
>
> This labor contract applies solely to the employees at the Applicator Division of Comar, Inc. It does not apply to other employees of Comar, Inc.

The unit employees assembled droppers, the devices that are used to apply eye drops, for example. They did so by using rotary machines that assembled about 40 parts per minute. These machines were used to do small runs. It took a good deal of experience to become skillful at efficiently operating the rotary machines. As Respondent's former executive director of operations explained: "[T]hat rotary department took a little bit of training, it took a little bit of a knack to learn that, so you couldn't expect any of us in this room to, within a couple of days, sit down at the rotary wheel and start to do that work. It took many, well, the ones that were really good, it took years to get really good at." The unit employees also operated machinery that stamped calibrations on the pipette portion of the dropper and that wrapped the assembled droppers in cellophane. Immediately prior to the consolidation there were about 50 employees in the unit. The parties often refer to this operation as the applicator division and to these employees as applicator employees.

John Ford was the plant manager at the Buena location; he was responsible for the work in the four departments: finishing, blow mold, ejection mold, and seals. Each department had its own department head. The Buena location actually consists of four buildings. One building houses the corporate headquarters

[4] Respondent actually has two facilities in Vineland. The second facility, known as the glass division, produces glass vials. That facility is not involved in this proceeding.

staff. Across the street is a building that houses the finishing department. The next building is the main factory and housed the molding operations and warehouse; it also had an area known as the seal's department.[5] The fourth building housed the machine shop and cafeteria.

The employees in the finishing department at Buena also assembled droppers, but generally they were not the same droppers as were assembled by the unit employees in Vineland. Unlike the unit employees, the Buena finishers used high-speed machines that assembled 275 to 300 parts per minute. The employees who operated these machines worked essentially as attendants, loading the machines with the necessary components and performing routine quality control checks. Operation of this equipment therefore required less skill than the operation of the rotary machines used by the unit employees at Vineland. It was inefficient, however, to use these high-speed machines for small runs; those runs were more efficiently done using the rotary machines at the Vineland facility. Employees in the finishing department at Buena also operated high-speed wrapping machines that wrapped the droppers in cellophane. They also operated machines that stamped calibrations on the pipette portion of the dropper. There was also a lining operation and heat-sealing work performed there. Before September 27 about 65–70 employees worked in the finishing department in Buena. The employees in the molding department at Buena manufactured parts that were assembled by the employees in the finishing department in Buena and by the unit employees in Vineland. However, about 20 to 30 percent of the products that they assembled were from outside sources. The parties frequently refer to the Buena operation as the plastic's division and to these employees as the plastics' employees.

B. Consolidation, Bargaining, and Information Requests

On April 27, Martin Sobol, an attorney and Respondent's representative for purposes of dealing with the Union, sent identical letters to the Union and to the national headquarters of the American Flint Glass Workers Union, AFL–CIO. The letters stated that Respondent was then considering a potential consolidation of its existing facilities, including the applicator division. The letter indicated that such a consolidation could result in the closing of the Vineland facility, and advised that should a decision to consolidate be made it would be implemented in the summer or early autumn. The letter invited the Union to contact Sobol if the Union wished to discuss or bargain about the matter.

The Union first requested information relating to the proposed consolidation by letter dated May 4. In that letter the Union stated:

> You state that the Company is presently considering a potential consolidation. Please advise the Union as to where this consolidation stands, that is, at what stage of the Company's evaluation process is the matter? Also, kindly provide copies of any internal or external studies, analyses, reports or recommendations, and any memorandum or other writings dealing with the potential consolidation.
>
> Please identify the Company's facilities that are under consideration for potential consolidation, and state what products each facility makes. Please also state whether the facilities are represented or unrepresented for collective bargaining purposes, and provide the wages and benefits applicable to each facility. Please advise me now and in the future in the event of any change, as to when such consolidation would be implemented.

Respondent replied by letter dated May 27. That letter stated that internal consideration of the consolidation began in 1998 and was ongoing. Respondent enclosed certain sections of an Arthur Andersen study presented in November 1998, a 1999 business plan presentation, a site consolidation report, and the minutes of a December 18, 1998 meeting of the board of directors. The information provided was extensive—it was several inches thick. The letter indicated that all of Respondent's plants were subject to consolidation consideration and that the applicator division was the only represented facility. Wage and benefit cost information for the several facilities was enclosed. The letter stated that Respondent was considering a number of consolidation options and that should a decision to consolidate be made, the consolidation would take place as soon thereafter as physically and economically practicable. The letter stated: "Should such a decision include an initial consolidation of the Applicator plant with the Plastics Plants, the company anticipates that . . . such could be implemented in the summer or early autumn of this year." The letter ended by inviting the Union to contact Respondent if it had any other questions. By letter dated June 25, the Union acknowledge receipt of the information and requested that it be notified immediately if a decision was made affecting the applicator division.

Meanwhile, by June 24, Respondent had prepared a drawing showing the exact location at the Buena facility where the equipment from Vineland would be situated. The drawing revealed that the equipment from Vineland would not be integrated into the area occupied by the finishing department at Buena but instead would be located in a separate area in another building. Concordia admitted that by that date Respondent had made a decision to relocate the unit employees and their equipment to Buena. This drawing and the information contained therein was never provided to the Union.

On July 1, the Union sent a letter notifying Respondent that it desired to modify the existing contract upon its expiration. It proposed that the parties meet and negotiate a new contract at a mutually arranged date. On July 16, Respondent replied to the Union's July 1 letter. Respondent informed the Union that it had decided to close the applicator division "subject to the bargaining agreement and to consolidate the work and functions thereof into an existing Comar facility." The letter indicated that Respondent anticipated that the closing and consolidation would occur September 15 and that Respondent was willing to bargain as required by the Act.

On July 15, Respondent's board of directors passed a resolution that indicated that board of directors had explored the implications of a possible closure of the applicator division and

[5] This area contained several metal stamping machines that produced crimp top seals that are used as a component part for injectable drug dispensers.

that it determined that the closure of the applicator division was consistent with Respondent's business and financial interest. The resolution also acknowledged that the employees working at the applicator division were represented by the Union and Respondent had an obligation to bargain with the Union concerning the impact of the consolidation on the employees. The resolution asserted that the board of directors was aware that the Union had been advised of Respondent's plan to consolidate the applicator division. The resolution, however, did not indicate what facility the applicator division would be consolidated with.

On about July 20, Respondent held meetings with the employees on the first and second shifts at Vineland. At the first-shift meeting Gene Concordia, then Respondent's executive director of operations, told the employees that their work would be relocated to the Buena location. He assured them that, except for a few employees, they did not have to worry about their jobs. He said the move was going to be "like a beehive;" they would just pick it up and move it to Buena. He also announced that the unit employees would receive lower wage rates and benefits at the Buena location. Neher made similar comments to the employees on the second shift.[6]

On July 20, the Union responded to Respondent's July 16 letter by stating that it would be contacting Respondent to schedule severance negotiations. The Union sent Respondent another letter, 2 days later. This letter stated, in pertinent part:

> Since [the July 20 letter], new information has come to the Union's attention. Specifically, it is the Union's understanding now that the proposed action by Comar merely involves moving the plant assets a few miles away from the current plant and operating with the same workforce.
>
> This is to advise you that the Union is reserving all of its rights, including the right to bargain a new labor agreement; to take the position that the current (and/or successor) collective bargaining agreement continues to apply to any new location of the work; that the bargaining unit continues at such new location; and the right, as appropriate dependent on our future analysis of this matter, to engage in decision and effects bargaining.

On July 26, Respondent prepared a letter to its customers advising them that it would be relocating equipment used to produce the products supplied to them from Vineland to Buena. The letter continued:

> First, let me assure you that nothing will change regarding the production of your products. This is solely and only a relocation of the same manufacturing process and the same experienced personnel that have historically produced and supplied your products all along. In addition, our quality systems, planning and inventory management systems and our commitment to meeting your needs remain the same. . . . As indicated, nothing beyond the physical location of this equipment will change.

The parties agreed to meet on August 30, but on August 24 the Union canceled the meeting and it was rescheduled for September 8. On August 30, in anticipation of the meeting, the Union advised Respondent that:

> At meetings held by the employer with bargaining unit employees, the employees were told by employer representatives that the unit workers would move to the new plant and perform the same jobs; that 99% of the bargaining unit would be offered jobs at the new location; unit employees would be working in their own building separate from other employees at the new location; the plant was not closing, it was just moving from one building to another.

The letter indicated that the Union wanted to discuss a successor collective-bargaining agreement. It continued: "[T]he Union wants to know the Company's specific plans, and to work out procedures and terms, for the relocation of the unit employees to the new location." The letter concluded by indicating that the Union wanted to discuss the matter of the wages and benefits for the unit employees.

In early September, Respondent posted at the Vineland facility the job openings that would be available at the Buena facility. Although the job titles were different, the postings were for the same work that the unit employees were performing at Vineland.

On September 8, the Union and Respondent met. Present for Respondent were Sobol, Concordia, and Duffy. Timothy Tuttle, National representative, Catherine Guilford, local union president, and Anthony Wiessner, local vice president represented the Union. The union representatives explained that they wanted to negotiate a new contract, discuss the details of the move to Buena, and discuss severance matters. According to Tuttle, Sobol said that applicator operations at Vineland were being closed on September 15 and that the move would be completed by September 30. Tuttle replied that this was contrary to the information that he had received from the members; that the Union was told that at a meeting that Respondent held with the unit employees. Concordia told the employees that the operations were being moved "like a beehive" to Buena. According to Tuttle, Sobol denied that this was going to happen; instead Sobol asserted that the unit employees would be integrated and mixed in with the existing employees at Buena. Tuttle testified that Sobol said that the Buena supervisors would have responsibility for the entire finishing operation. The parties then moved on to the subject of the resolution that Respondent's board of directors had passed on this matter, Tuttle asked for the resolution but that Sobol avoided making a response. The Union then presented a written proposal to modify the existing contract. The proposal contemplated another 3-year contract and called for wage and benefit increases. The Union then read the proposal out loud. Sobol then tossed the written proposal aside and asked what the Union wanted to do now. Sobol suggested that the parties agree to an extension of the existing agreement until the move was completed. That same day the Union gave Respondent a written request for information. The Union requested (1) the plan document, outlining the

[6] These facts are based on the testimony Catherine Guildford, who was the Union's president and who had worked at the Vineland facility since 1966. She impressed me as a thoroughly credible witness. Concordia testified concerning the meeting that he held; his testimony is not to the contrary. Neher did not testify.

current health care plan; (2) meeting dates and times that the Respondent met with unit employees to discuss the proposed consolidation; and (3) specific plans detailing the Company's proposed consolidation as it pertained to applicator division and its employees. Sobol said that the information had been sent to the national union in May, but that he would again supply the requested information.

Respondent answered the next day by providing the Union with an outline of the current health insurance plan, specific plans detailing Respondent's proposed consolidation as it pertained to the applicator division (and indicating that this information had previously been provided on May 27), and the intended pay rates for employees at the new facility. The letter stated that there had been one meeting with employees on the subject, but that information concerning the specific date of the meeting was not then available but more specifics would be obtained. The letter ended by stating:

> As I previously indicated at our meeting of September 8th, the move shall commence on or about September 15, 1999, and be completed by September 30, 1999, which is the expiration date of the current contract. In the event the move is extended beyond September 30th, I suggest we extend the current Agreement until the completion of the move. If you desire to negotiate a new Agreement for that short period of time between the expiration of the contract and the completion of the move, if that eventuality occurs, I would be happy to do so. However, I think it more prudent just to extend the current agreement.
>
> Should you wish any additional information, please do not hesitate to contact the undersigned.

The parties met again on September 14. The Union began the meeting by presenting a copy of an unfair labor practice charge that it had filed against Respondent. The Union asked for the information that it had requested and it turned out that Respondent had sent the information to Tuttle's home address in New York and he had not received the information because he was staying in the local area. Sobol then did produce some information, and the Union caucused to review it. The Union concluded that the information did not satisfy its needs, and it asked again for details concerning the move to Buena and how it affected unit employees. Sobol answered that if the Union put the request in writing he would respond. The Union then presented a written severance proposal. Sobol responded by suggesting that the parties agree to extend the current contract. He clarified that it now appeared that Respondent would not complete the move until around September 30, and he offered to negotiate a new contract for the short period of time after September 30 if the move was not completed by then. However, Sobol expressed his preference for merely extending the existing agreement. Guildford asked for an explanation of why Respondent had posted about 32 jobs. Duffy replied that Respondent wanted to know how many unit employees would be transferring to Buena. During these meetings Respondent assured the Union that it was not going to train new people to do the work of the unit employees who already had the skills to perform the work. The Union stated that after it received the requested information it would contact Respondent and set up another meeting. However, the Union never sought to arrange another meeting because it felt that further negotiations would be fruitless.[7]

As requested, the Union made its request for information in writing on September 20. The Union requested:

> [T]he Company's plan concerning the transition of the Applicator business from the current facility in Vineland, New Jersey to the new facility in Buena, New Jersey. As I explained in our meeting, this request includes management's plan with respect to both the move itself and the operation of the new facility(including, but not limited to, physical location within the Buena facility, supervisory structure, staffing, hours of operation, and other terms and conditions of employment.

Not waiting for the Union's written request, on September 21, Respondent faxed the Union the following:

> Pursuant to your request, albeit it was not put in writing as requesting [sic], the following information is provided:
>
> 1. Item 1, which is attached hereto and made a part hereof as Exhibit "1" is [sic] the details of the move.
>
> 2. Work locations will be determined by classifications as we assimilate this equipment and the persons into the plan.
>
> 3. With regard to your request regarding the hours of work, the hours of work shall be the same as the Finishing Department. Specifically. Those hours of work are as follows: First shift—7:00 a.m. to 3:30 p.m. Second shift—3:30 p.m. to 12:00 midnight.
>
> 4. In response to the Union's request for an extension of time on job postings, the deadline period shall be extended until Thursday, September 23, 1999.
>
> If you have any other questions or require any additional information, please do not hesitate to contact the undersigned

The exhibit included with the letter described what equipment was being moved from the Vineland facility to the Buena facility and when it was moving. It should be noted that Respondent's comments that the work locations would be determined as the equipment and employees were assimilated flies in the face of the June 24 floor plan described above.

The relocation was completed on September 27. As of that date Respondent no longer recognized the Union and no longer applied the contract to the former Vineland employees. The unit employees became classified as part of the finishing department at the Buena facility. However, they were not located within the building that housed the finishing department. Instead, the unit employees worked in a separate area in another building at the Buena facility. That area had formerly housed the seal's department; that department was moved to the Vineland facility just before the Vineland unit employees were moved to Buena. As previously indicated, this area was in a

[7] The facts concerning the September 8 and 14 meetings are based on Tuttle's testimony, which to a great degree is not contradicted by Sobol. To the extent that there are minor differences between their testimony, I have determined to credit Tuttle's testimony largely based on his credible demeanor.

different building from the rest of the finishing department at the Buena facility. It was located about 100 yards from that building. The seal's area was a room separated from the rest of the facility. In addition, Respondent took a small portion of the injection mold area located near the seal's room and devoted it for use by the former Vineland employees. As of September 27, all of the unit employees worked in the seal's room; none were assigned to areas outside that room.

Much of the equipment that the unit employees had used at Vineland was moved to Buena and placed in the former seal's area. This included 12–14 of the 16 rotary machines. The rotary machines had constituted the core of the operations at the Vineland facility. Prior to the relocation there had been no rotary machines at Buena. Other equipment used by the unit employees and relocated from the Vineland facility to the area in or near the former seal's room at Buena included the tumbler, the bellows machine, one or two cap-punching machines, three automatic assembly machines, and one wrapping machine. The benches used for hand assembly were also moved to Buena. The quality control function for the products produced by the equipment was performed in a separate room in the seal's area. One piece of equipment from Vineland was relocated to an area outside the seal's room. A wrapping machine was placed in the building that housed the finishing department, but unlike the wrapper placed in the seal's room, this wrapper was not used regularly.[8] No equipment or operations from the existing finishing department were transferred to the seal's room.

Of the about 50 unit employees all but 3 or 4 were offered employment at Buena. Of those 23 accepted and 24 refused to accept employment at Buena. Among those accepting employment were rotary machine operators, hand-assembly persons, a material-handling person, a setup mechanic, and a wrapper. These employees continued to perform the same work on the same equipment at Buena as they had at Vineland.

Neher, who had been the plant manager at the Vineland facility, became department head for the entire finishing department at Buena.[9] Schultz, formerly the first-shift supervisor at Vineland, became the first-shift supervisor for the entire finishing department at Buena. Keith Anderson, formerly the second-shift supervisor at Vineland, became a second-shift supervisor for the entire finishing department at Buena. Anderson became the second supervisor on that shift, joining Linda Foster who already was a supervisor there.[10] Gabriel, formerly quality control supervisor at the Vineland facility, continued in the same position at Buena. Respondent recognized that the rotary machine operators were able to perform their functions without close supervision.

Effective that same day Respondent made a number of changes to the terms and conditions of employment of the unit employees. The unit employees who transferred to the Buena facility were required to sign an "Employee Agreement." In this document the employee acknowledged the receipt of an employee handbook and that he or she was in "at will" employment relationship, among other things. Before the transfer the unit employees had not been required to sign such an agreement and were not covered by the employee handbook. As indicated, the unit employees became part of the finishing department at the Buena facility and all employees in that department were placed on the same seniority list. Before the consolidation the unit employees did not have an evaluation program; after the move they were covered by the same evaluation system as other finishers at the Buena location. Unit employees at Vineland had one additional holiday and one personal day that the unrepresented employees did not; after the consolidation these extra days off were taken away to bring the unit employees into conformance with the other employees. Unit employees were covered by a pension plan under the union contract; after the move they were not. The unit employees had their own 401(k) retirement plan; after the transfer the unit employees were placed in the same 401(k) plan as the unrepresented finishers. Unit employees received sick pay; unrepresented employees did not. After the relocation the sick days were taken from the unit employees and bereavement leave was also reduced. The amount of vacation time for unit employees increased after the transfer, and they became eligible for a bonus. They were credited with the time they had accumulated for purposes of vacation accrual. At the Buena facility after the consolidation all employees used the same timeclock and shared the same lunchroom. However, unit employees used the toilet facilities located near the seal's department; they did not use the toilet facilities used by the finishing department employees in that building.

In sum, the former Vineland employees performed the same work on the same machines as they had done in Vineland. Respondent continued to assign these employees short runs for the efficiency reasons previously indicated and these employees continued to assemble, stamp, and wrap the same product as before.

After the relocation, nonunit employees began to interact to some degree with the former unit employees. For example, whereas before there was only one material handler who worked to supply the unit employees, after the consolidation other material handlers who were already working at the Buena facility assisted in bringing material to the former Vineland employees. They brought material to a staging area near the work location of the unit employees and then the unit material-handler distributed the material to the unit employees. Pursuant to an existing program, the unit employees were afforded opportunities to cross-train on other equipment outside the seal's room. After they achieved a skill level on other equipment they were given a pay raise. As of the date of the hearing in this case only two unit employees had completed the cross-training program and another employee attempted but was unable to

[8] At some undisclosed time prior to the relocation, Respondent moved six old stamping machines and a re-knobbing machine from Vineland and placed them in the finishing department building. Use of the re-knobbing machine was being phased out over time.

[9] Neher actually assumed this responsibility at some undisclosed time prior to September 27. At some later point Neher was reassigned to the production scheduler position and Kurt Gellert became the department head.

[10] At some undisclosed time thereafter Foster left and Anderson was the only supervisor for the second-shift finishing department until Respondent was able to hire a replacement for Foster.

complete it due to illness. The record is clear, however, that because of the high number of unit employees who declined to transfer from Vineland to Buena, Respondent was short handed—at least on the rotary machines. As a result it was unable to allow any cross-training for those employees for a period of several months. Four or five employees in the original finishing department at Buena have trained to operate the rotary machines used by the unit employees. The record is unclear exactly when this training took place. Of these two or three have been successful, but none are assigned to operate the rotary machines on a regular basis.

On October 7, Respondent sent the Union a letter that stated:

> It has been some time since our last meeting and since I forwarded the information requested. Please be advised that if you wish additional information, we will be happy to provide it and would be willing to meet at a mutually convenient time and place to discuss the effects of the closing.

The Union responded by letter dated October 12 that stated:

> The Union has been and is desirous of bargaining over the decision to relocate the Vineland work and its effects. The employer's unremedied unfair labor practices preclude meaningful bargaining at this time. Additionally, the employer's unlawful acts have interfered with the Union's acting as bargaining representative in an appropriate unit at the Buena location. The employer's unlawful actions concerning the relocation and its effects on employees must be rescinded. Also, please be advised that neither this firm nor the Union have received all of the information and documents that were requested from Comar, Inc. In particular, we still have not been provided with certain information concerning Comar's plans for the facility in Buena, New Jersey. As Ken Wagner stated during the meeting on September 14, 1999, and reiterated in his September 20, 1999 letter, that information should include, but not be limited to, Comar's specific plans regarding the placement of former Vineland employees within the Buena facility. In addition, the Union has requested a copy of a so-called "integration" resolution, allegedly entered into on July 15, 1999. In behalf of the Union, I renew our requests for the foregoing information, which is relevant and necessary for the Union to bargain in an informed manner over the various issues raised by this relocation.

III. ANALYSIS

A. Appropriateness of the Unit

The first question to be addressed is whether the recognized unit at Vineland remained appropriate for bargaining after the relocation. Respondent argues that the unit employees were merged, or more accurately accreted, into the existing finishing department at Buena and therefore no longer constituted a separate unit. The Union and the General Counsel argue that the unit remained appropriate even after the relocation.

The Board follows a restrictive policy in determining whether an accretion has occurred because the accreted employees are not able to decide for themselves whether or not to be represented by a labor organization and the Board seeks to insure that the employees' rights in this regard are not improperly foreclosed. *Towne Ford Sales*, 270 NLRB 311 (1984), affd. sub nom. *Machinist District Lodge 190 v. NLRB*, 759 F.2d 1477 (9th Cir. 1985). The Board will find an accretion "only when the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted [footnotes omitted]." *Safeway Stores*, 256 NLRB 918 (1981). The fact that a combined unit of the existing employees and those sought to be added by accretion may constitute an appropriate unit does not compel an accretion so long as the employees sought to be accreted themselves constitute an appropriate unit. *Melbet Jewelry Co.*, 180 NLRB 107 (1969). In deciding whether an accretion has occurred the Board examines factors such as functional integration, level of management control, similarity of working conditions, bargaining history, employee interchange, job skills and functions, and physical proximity. *NLRB v. Food Employers Council, Inc.*, 399 F.2d 501 (9th Cir. 1968). In determining whether a unit of employees has been accreted into another group of employees, the nature of the operations is examined at the time of the withdrawal of recognition unless there is a well-defined plan or timetable for achieving fuller functional integration. *Northland Hub, Inc.*, 304 NLRB 665 (1991).

I have found above, that the unit employees continued to perform the same work on the same equipment making the same products as they had at Vineland. They continued to perform that work under essentially the same supervision. They performed this work in a separate room in a building apart from the other Buena finishers. The difference in skill levels between the unit employees and the Buena finishers remained intact. No unit employees worked in the Buena finishing building; no Buena finishers regularly worked in the seal's room. The unit employees had a decades-long history of union representation, and this history was deeply absorbed into the employees by virtue of the fact that many unit employees had worked in their positions for decades. Respondent itself recognized the need to maintain the separate identity of the unit employees, even after the relocation. This is shown by the fact that Respondent told the unit employees that the operation would be moved "like a beehive" and that it assured its customers that nothing beyond the physical location of the work. Indeed, the distinct nature of the unit is borne out by the fact that a year and a half after the relocation the little more had occurred to merge it into the Buena finishing department. These facts weigh heavily in support of the conclusion that the unit employees maintained their separate identity.

Of course, as I have described above, some changes detracting from the distinctiveness of the unit did occur. First, and most significantly, the unit employees lost their distinctive wage and benefit package and were given the same package as the Buena finishers. The General Counsel and Union argued that I should not give any weight to these changes in determining whether the unit remained appropriate. This is so, they argue, because Respondent has refused to bargain about the *effects* of the relocation. In cases involving the relocation of unit work the Board has held that the obligation to bargain over the effects of the move on unit employees includes the obliga-

tion to bargain concerning the terms and conditions of employment under which employees will initially be employed at the new location. *California Footwear Co.*, 114 NLRB 765 (1955); enfd. in relevant part sub nom. *NLRB v. Lewis*, 246 F.2d 886 (9th Cir. 1957), on remand 122 NLRB 37 (1958); *Cooper Thermometer Co.*, 160 NLRB 1902 (1966); enfd. in relevant part 376 F.2d 684 (2d Cir. 1967). The Board has applied this same principle to situations that involve a merger of operations. *Holly Farms Corp.*, 311 NLRB 273 (1993), enfd. 48 F.3d 1360 (4th Cir. 1993), affd. 517 U.S. 392 (1996). As described more fully below, I conclude that Respondent failed to fulfill it obligations in this regard and that consequently these changes were unlawful. Thus, these changes can be accorded little weight in determining whether the unit remained appropriate. To hold otherwise would allow Respondent to benefit from its own unlawful conduct. Respondent attempts to distinguish *Holly Farms* on the grounds that it had a well-defined plan or timetable established for achieving a functional integration of operations. In doing so, Respondent relies on Duffy's testimony that Respondent evaluated each individual unit employee for the wages to be paid them after the relocation and implemented the new wage and benefit package upon the transfer of the unit employees to the Buena facility. But this only shows that Respondent had a plan to lower the wages and benefits of the unit employees after the relocation. It does not show that Respondent had a well-defined plan to integrate the unit employees into existing operations. To the contrary, the facts show that Respondent had no plans to fully integrate the unit employees into the operations at Buena, at least to such a degree so as to negate the separateness of that unit. This is borne out by the fact that even as of the time of the trial in this, the unit employees still worked in isolation, performing the same work on the same equipment at they had at Vineland. Under these circumstances, I give little weight to the fact that the unit employees lost their separate wage and benefit package after the relocation. Falling into this same classification of changes that were unlawfully implemented is the merger of the seniority lists, the required signing of the prehire agreement, and the performance evaluations.

Other changes occurred as a result of the relocation. Upon analysis, however, the nature of these changes only serves to highlight the distinctiveness of the unit. For example, after the relocation the unit employees had the opportunity to learn to operate the equipment used by the Buena finishers and visa versa. But few employees took advantage of this opportunity and no employees were regularly assigned to work on the equipment that they had learned to operate. Little daily interaction occurred between the unit employees. So far as this record shows, the only specific instance of increased interaction occurred when nonunit material handlers brought material to the seal's staging area for the unit material handler to distribute to the unit employees. Although all employees had the opportunity to use the lunchroom, there is no evidence that the unit employees actually did so. As pointed out above, the unit employees used different toilet facilities from the Buena finishers.

Finally, a measure of functional integration existed between the Vineland and Buena facilities even before the consolidation. There is no specific evidence that the degree of integration changed in any appreciable way after the relocation.

Looking at the big picture of the events of September 27 and thereafter, I conclude that Respondent essentially relocated the unit intact while reducing employee wages and benefits and ridding itself of the Union. I further conclude that the unit remained appropriate after the relocation and was not accreted into the existing finishing department. *Radio Station KOMO-AM*, 324 NLRB 256 (1997); *Paper Mfrs. Co.*, 274 NLRB 491 (1985), enfd. 786 F.2d 163 (3d Cir. 1986).

Respondent cites *Kelly Business Furniture*, 288 NLRB 474 (1988). I conclude that case is inapposite. In that case there was no distinct geographic separation between the two groups of employees, there was a greater level interaction and interchange between the two employee groups, and there was a much shorter collective bargaining history for the group of accreted employees. Importantly, none of the changes implemented by the employer in the merger process in that case were found to be unlawful. All these factors serve to distinguish *Kelly Business Furniture* from the instant case. For similar reasons *Borden Steel Rolling Mills, Inc.*, 204 NLRB 814 (1973), also cited by Respondent, is inapposite.

As set forth above, the unit has been described in terms of the location of the employees in Buena. That description no longer conforms to the reality stemming from the relocation. I conclude that until the parties themselves agree to modify the unit description it is appropriate to describe the unit as:

> All hourly paid production workers who are performing the work that was formerly done as part of the Applicator Division of Comar, Inc. at its facility then located in Vineland, New Jersey, except plant executives, salesmen, office employees, janitors, watchmen and foremen, as excluded by the provisions of the Labor Management Relations Act of 1947 as amended.

B. Refusal to Recognize the Union and Related Issues

The General Counsel alleges that Respondent unlawfully failed to recognize the Union as the collective-bargaining representative for the unit employees at the Buena facility. When a unit of employees with a collective-bargaining representative is relocated the Board will require the employer to continue to recognize the union and apply an existing collective-bargaining agreement if the operations at the new location are substantially similar to those at the old location and if at least 40 percent of the unit employees at the new location came from the old location. *Westwood Import Co.*, 251 NLRB 1213 (1980); *Harte & Co.*, 278 NLRB 947 (1986). I have already concluded that the unit remained intact, and all of the employees working in the unit at Buena came from the Vineland location. Thus, the General Counsel has met the *Westwood* and *Harte* requirements. The facts also show that Respondent consistently failed to recognize that the Union as the collective-bargaining representative for the relocated unit employees. It follows that Respondent violated Section 8(a)(5) and (1) by failing to recognize the Union as the collective-bargaining representative for the unit employees at Buena.

The General Counsel alleges that Respondent unlawfully altered the terms and conditions of the unit employees. The evi-

dence also shows that effective September 27, Respondent made a number of changes in the wages, benefits, and other conditions of employment of the unit employees at Buena. Some of the changes dealt with matters covered by the existing collective-bargaining agreement. As to those matters, the Union's consent was required before the changes could be effectuated. *Harte & Co.,* supra. Other changes were in conditions of employment not covered by the contract. As to those changes, Respondent was required to first give the Union notice of and a chance to bargain concerning the proposed changes. However, Respondent was refusing to recognize the Union as the collective-bargaining representative of the unit employees despite the fact that the unit would remain intact after the relocation. Respondent's refusal to recognize the Union is shown by the fact that as early July 20 Respondent had met with the unit employees and announced the new terms and conditions of employment at the Buena facility; this was done without prior notice to the Union, who was then faced with a fait accompli. In both situations Respondent failed to fulfill its obligations. Respondent therefore violated Section 8(a)(5) and (1) by unilaterally changing the wages, benefits, and other terms and conditions of employment of the unit employees at Buena.

The General Counsel also alleges that Respondent unlawfully failed to bargain for a new collective-bargaining agreement. In that regard the facts are that the existing contract was set to expire on September 30. During the meetings with the Union in September, Respondent took the position that it was willing to negotiate a short-term contract that would cover the unit employees while they continued to work at Vineland. Respondent refused to bargain for a contract that would cover the unit employees after they were relocated to Buena. Because I have concluded that Respondent was required to recognize the Union as the collective-bargaining representative for the unit employees at Buena, it follows that Respondent violated Section 8(a)(5) and (1) by refusing to bargain for a collective-bargaining agreement covering those employees.

Respondent argues that the recognition clause, set forth above, restricts the unit to one geographic area, citing *NLRB v. Waymouth Farms, Inc.*, 172 F.3d 598 (8th Cir. 1999). I disagree. The first sentence in the recognition clause does no more than describe the unit. The second sentence limits the application of the contract to the employees at the applicator division and no other employees. It contains no geographic limitations. I have concluded above that the unit has remained intact and the applicator division has merely been relocated. Under these circumstances I conclude that the recognition clause is no defense to the violations of the Act described above.

C. Termination of Employees

The General Counsel alleges that Respondent unlawfully effectively discharged 24 named employees.[11] These were the unit employees at Vineland who declined to relocate to Buena after Respondent announced that they employees would have to accept lower wages and benefits in order to work there. I have already concluded that Respondent's action in imposing the lower wage and benefits was unlawful. Under these circumstances the Board recognizes the right of employees to insist on continuing to receive the wages and benefits that resulted from the collective-bargaining process and that were unlawfully withdrawn. *Holly Farms Corp.*, supra, 311 NLRB at 278–279. By effectively terminating these employees,[12] Respondent violated Section 8(a)(5) and (1).

D. Refusal to Provide Information

The General Counsel alleges that Respondent unlawfully refused to provide with information that it had requested. At the hearing the General Counsel contended that the information that Respondent failed to provide to the Union consisted of the location of the placement of the Vineland machinery in the Buena facility, the identities of the employees working on those machines, a complete listing of the benefits received by those employees, and the supervisory structure at the Buena facility. An employer is obligated to provide a union with information that the union requested and that is relevant and necessary for the union to fulfill its role as the collective-bargaining representative of the unit employees. *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967). This obligation covers information that is relevant to bargaining over the effects of a relocation of unit work. *Sea-Jet Trucking Corp.,* 327 NLRB 540 (1999). It also covers information needed by a union to independently verify and employer's claim that a recognized unit no longer exists. *Metro Foods,* 289 NLRB 1107, 1118 (1988).

The first item of information concerns the location of the equipment relocated to Buena and the identification of the employees who would be operating that equipment. The Union had requested this information several times, most clearly in its September 20 letter. Respondent had a floor plan, previously described, that sets forth the precise location at the Buena facility where the equipment used by the unit employees would be located. Respondent had this information by June 24, but it failed to provide it to the Union. Respondent also knew which employees were being transferred and the equipment they would be working on, but it failed to disclose this information to the Union. This information is palpably relevant to the Union's attempt to bargain with Respondent concerning the effects of the relocation and to verify whether the recognized unit no longer existed. Not only did Respondent fail to provide the Union with this information, it actively misled the Union on this matter at the bargaining table by asserting that the unit employees would be assimilated into the Buena facility.[13] Re-

[11] Barbara Brett, Gregory Campbell, Theresa Capaldi, Judith Carney, Shelley Carney, Nancy Fairman, Vessi Garoff, John Gray, Catherine Guilford, Michele Guilford, Sheila Heck, Robert Joslin, Latanya Mack, Gail Paulaitis, Ella Percev, Linda Pierce, Helena Pollack, Ingrid Regalbuto, Rhonda Rio, James Smart, Sandra Thurston, June Walko, Alice Weddington, and Anthony Wiessner.

[12] The record does not show which, if any, of these employees would not have accepted the transfer to Buena for reasons unrelated to the unlawful changes in their terms and conditions of employment. However, the Board allows this matter to be addressed in the compliance stage of this proceeding. *Cooper Thermometer,* supra at 1917.

[13] In its brief, the Union asserts that Respondent's conduct in misleading it independently violates Sec. 8(a)(5). However, this matter was not alleged in the complaint and the General Counsel did not move to amend the complaint during the hearing to include this allegation.

spondent violated Section 8(a)(5) and (1) by failing to provide the Union with information concerning the location where the unit employees and the equipment used by those employees would be located at the Buena facility and by failing to identify which employees were assigned to operate that equipment.

The General Counsel also contends that Respondent unlawfully failed to provide the Union with the names of the supervisors who would be overseeing the work performed by the unit employees at the Buena facility. I find merit to this contention. The Union specifically requested this information in the September 20 letter. This information too is obviously relevant to the Union's need to bargain effectively for and otherwise represent the unit employees. Respondent told the Union only that the Buena supervisors would be supervising the unit employees; it failed to inform the Union that the Vineland supervisors would also be supervising the unit employees at Buena. Respondent violated Section 8(a)(5) and (1) by failing to provide this information.

Concerning the allegation that Respondent failed to provide the Union with a description of the terms and conditions of employment of the unit employees at Buena, the General Counsel argues that Respondent provided no information beyond proposed wages, shift hours, and health benefits. I find merit to this contention too. The Union requested this information in the September 20 letter and its relevance is beyond challenge. Respondent's response was inadequate. It failed, for example, to provide the details set forth in the employee handbook that it applied to the unit employees. Respondent failed to notify the Union of the forms it required the unit employees to sign, forms that described an "at will" employment relationship. By failing to fully disclose the terms and conditions of employment of the unit employees at Buena, Respondent violated Section 8(a)(5) and (1).[14]

E. Refusal to Bargain Concerning the Effects of the Relocation

The General Counsel alleges that Respondent unlawfully refused to bargain concerning the effects the relocation and merger had on unit employees. The facts show that Respondent did offer to bargain over the effects of the relocation and to that end the parties met and discussed the matter. The Union made a proposal and Respondent ostensibly considered the proposal. But I have also concluded that Respondent unlawfully failed to provide the Union with certain requested information. The effect of the failure to provide this information was exacerbated by the fact that Respondent at the same time was giving the Union misleading information at the bargaining table concerning the nature of the relocation. I have already described above how Respondent's obligation to bargain concerning the effects of the relocation included the duty to bargain concerning the terms and conditions of employment under which the unit employees would be relocated. Respondent failed to fulfill that obligation when it unilaterally determined the working conditions of the unit employees at the Buena facility. Under these circumstances good-faith bargaining over the effects of the relocation was precluded by Respondent's unlawful conduct and the Union was justified in suspending such bargaining until Respondent's unlawful conduct was rectified. By failing to bargain in good faith over the effects of the relocation, Respondent violated Section 8(a)(5) and (1).

CONCLUSIONS OF LAW

By the conduct described below Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

1. Failing and refusing to recognize the Union as the collective-bargaining representative for the employees in the following unit:

> All hourly paid production workers who are performing the work that was formerly done as part of the Applicator Division of Comar, Inc. at its facility then located in Vineland, New Jersey, except plant executives, salesmen, office employees, janitors, watchmen and foremen, as excluded by the provisions of the Labor Management Relations Act of 1947 as amended.

2. Changing the terms and conditions of employment covered in the collective-bargaining agreement for unit employees without first obtaining the Union's consent.

3. Unilaterally changing other terms and conditions of employment of unit employees without first giving the Union notice and an opportunity to bargain over those changes.

4. Refusing to bargain for a collective-bargaining agreement covering the unit employees at the Buena facility.

5. Conditioning continued employment on the acceptance of unlawfully implemented changes in terms and conditions of employment, thereby discharging the following employees:

> Barbara Brett, Gregory Campbell, Theresa Capaldi, Judith Carney, Shelley Carney, Nancy Fairman, Vessi Garoff, John Gray, Catherine Guilford, Michele Guilford, Sheila Heck, Robert Joslin, Latanya Mack, Gail Paulaitis, Ella Percev, Linda Pierce, Helena Pollack, Ingrid Regalbuto, Rhonda Rio, James Smart, Sandra Thurston, June Walko, Alice Weddington, and Anthony Wiessner.

6. Failing to provide the Union with requested information that is relevant and necessary for the Union to fulfill its role as the collective-bargaining representative of the unit employees.

7. Failing to bargain in good faith with the Union concerning the effects on unit employees of the relocation of unit work to the Buena facility.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Respondent having unlawfully changed the terms and conditions of employment of the unit

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Under these circumstances I decline the invitation to find that this conduct violated the Act.

[14] The General Counsel does not contend in his brief that Respondent otherwise unlawfully failed to provide information to the Union. While the Union claims that other information was unlawfully withheld, it is the General Counsel who brings the complaint and sets forth the perameters of the lawsuit. In the absence of clear notice to Respondent that those matters were to be litigated, I conclude that it would be unfair to now resolve those matters.

employees, it must, upon request by the Union, rescind those changes. It must also make the unit employees whole for any loss of earnings or benefits they suffered as a result of this unlawful conduct, including providing contractual benefits and making contractually required payments or contributions; this also includes any additional amounts applicable to such delinquent payments as determined pursuant to *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, Respondent must reimburse the unit employees for any expenses ensuing from its failure to make any required payments or contributions as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), affd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 623 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Respondent having unlawfully discharged employees, it must offer them reinstatement[15] and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, supra.

Respondent having unlawfully failed to provide the Union with certain information, it must supply the Union with that information.

Respondent having failed to bargain in good faith with the Union concerning the effects on unit employees of the relocation of unit work to the Buena facility, it shall be ordered to do so if requested by the Union. The General Counsel and the Union request that Respondent be ordered to pay the unit employees backpay in the manner set forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as modified in *Melody Toyota*, 325 NLRB 846 (1998). However, I conclude that a blanket *Transmarine* is not appropriate in this case. As set forth above, a number of employees accepted the offer to transfer to the Buena facility; they did not lose any time off from work and therefore are not entitled to this remedy. As to the remaining unit employees, I have ordered Respondent to offer them reinstatement and make them whole for the losses they suffered. Those employees too will be fully made whole by those remedies and any *Transmarine* remedy would be a windfall. There remains the possibility, touched upon above, that some unit employees would not have transferred to the Buena facility for reasons unrelated to the unlawful conditions of employment that Respondent implemented there. These employees, if any, are entitled the *Transmarine* remedy. And there may be discriminatees who will not be reinstated because there was not a sufficient number of positions, or substantially equivalent positions, for them at Buena. These employees too shall be entitled to the *Transmarine* remedy.

[15] I shall leave for resolution in the compliance stage of this proceeding the issue of whether there were sufficient positions available at Buena for all the discriminatees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[16]

ORDER

The Respondent, Comar, Inc., Buena, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize the Union as the collective-bargaining representative of the employees in the unit.

(b) Changing the terms and conditions of employment covered in the collective-bargaining agreement for unit employees without first obtaining the Union's consent.

(c) Unilaterally changing other terms and conditions of employment of unit employees without first giving the Union notice and an opportunity to bargain over those changes.

(d) Refusing to bargain for a collective-bargaining agreement covering the unit employees at the Buena facility.

(e) Conditioning continued employment on the acceptance of unlawfully implemented changes in terms and conditions of employment, thereby discharging employees:

(f) Failing to provide the Union with requested information that is relevant and necessary for the Union to fulfill its role as the collective-bargaining representative of the unit employees.

(g) Failing to bargain in good faith with the Union concerning the effects on unit employees of the relocation of unit work to the Buena facility.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All hourly paid production workers who are performing the work that was formerly done as part of the Applicator Division of Comar, Inc. at its facility then located in Vineland, New Jersey, except plant executives, salesmen, office employees, janitors, watchmen and foremen, as excluded by the provisions of the Labor Management Relations Act of 1947 as amended.

(b) Upon request rescind the unlawful changes made in the terms and conditions of employment of the unit employees.

(c) Make the unit employees whole for any loss of earnings or benefits they suffered as a result of the unlawful changes made in the terms and conditions of their employment, as provided in the remedy section of this decision.

(d) Within 14 days from the date of this Order, offer Barbara Brett, Gregory Campbell, Theresa Capaldi, Judith Carney, Shelley Carney, Nancy Fairman, Vessi Garoff, John Gray,

[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Catherine Guilford, Michele Guilford, Sheila Heck, Robert Joslin, Latanya Mack, Gail Paulaitis, Ella Percev, Linda Pierce, Helena Pollack, Ingrid Regalbuto, Rhonda Rio, James Smart, Sandra Thurston, June Walko, Alice Weddington, and Anthony Wiessner full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(e) Make those employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(f) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(h) Provide the Union with the information that it requested but that was unlawfully withheld.

(i) Upon request, bargain in good faith with the Union concerning the effects on unit employees of the relocation of unit work to the Buena facility.

(j) Pay to those unit employees, if any, who would not have accepted the transfer to Buena for reasons unrelated to the unlawful conditions of employment that Respondent implemented there and those unit employees, if any, who will not be reinstatement because there was not a sufficient number of positions, or substantially equivalent positions, for them, their normal wages when last in Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the relocation of unit work to Buena, New Jersey, on unit employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of Respondent's notice of its desire to bargain with the Union; and (4) the Union's subsequent failure to bargain in good faith, but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which Respondent transferred the unit work to Buena, New Jersey, to the time they secured equivalent employment elsewhere, or the date on which Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less that what the employees would have been earned for a 2-week period at the rate of their normal wages when last in Respondent's employ. Backpay shall be based on earnings which these employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(k) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(l) Within 14 days after service by the Region, post at its facilities in Buena, New Jersey, copies of the attached notice marked "Appendix."[17] Copies of the notice, on forms provided by the Regional Director for Region 4 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 10, 2001.

(m) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[17] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."